



**NEVADA COMMISSION ON ETHICS
STAFF REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO.
06-83

SUBJECT: WILLIAM S. HORN, GENERAL MANAGER
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

A. JURISDICTION:

In his capacity as the general manager of the Incline Village General Improvement District (IVGID), William S. Horn is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-83, received December 15, 2006 from Steven E. Kroll including timeline and supporting exhibits A through U (TAB B)
- Reviewed Request for Opinion (complaint) 06-82 received December 15, 2006 from Steven E. Kroll related to the same set of facts regarding the conduct of John A. Bohn, trustee, Incline Village General Improvement District Board of Trustees (TAB B)
- Reviewed determination of lack of jurisdiction letter dated December 20, 2006 from Commission on Ethics Executive Director to requester; reviewed letter received December 27, 2006 from requester to Executive Director appealing the determination to a Commission panel; reviewed letter dated January 19, 2007 from the Executive Director to the requester regarding the Commission panel's acceptance of jurisdiction (TAB C)
- Received *Waivers of Statutory Time Requirement* on January 24, 2007; reviewed responses received March 2, 2007 from Mr. Horn through IVGID General Counsel, T. Scott Brooke (TAB D)
- Reviewed several articles published in the *North Lake Tahoe Bonanza* newspaper (TAB E)
- Reviewed NRS 318 General Improvement Districts (TAB F)
- Reviewed Jurisdictional Panel Proceeding transcript from January 19, 2007 (TAB G)

- Reviewed copies of selected documents including (TAB H):
 - Undated, unsigned, draft of first letter of resignation from Beverly Mapps to John Bohn, cover letter signed by “Bev Mapps” to “Scott” (Brooke), copy of front of envelope marked “Scott Brooke” & “Confidential” in which draft of first letter of resignation and cover letter were submitted by Ms. Mapps to IVGID General Counsel Brooke
 - Letter dated September 26, 2006 from John Bohn to Beverly Mapps
 - Second letter of resignation, dated September 11, 2006 (as reproduced in the *North Lake Tahoe Bonanza* newspaper online November 10, 2006)
 - *FAQ’s about Beach Access* from IVGID website (www.IVGID.org)
 - Board of trustees November 8, 2006 meeting agenda, minutes, and Ms. Mapps’ letter of resignation submitted to board

C. RECOMMENDATIONS:

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2)
- NRS 281.481(6)
- NRS 281.554

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether Mr. Horn violated the provisions of NRS 281.481(2), NRS 281.481(6) and NRS 281.554.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

The complaint, submitted by Steven E. Kroll, alleges violations of NRS 281.481(2), NRS 281.481(6) and NRS 281.554 by Mr. Horn. The complaint also alleges violations of the Nevada open meeting law, election law, and other Nevada laws. The following is the substance of the complaint:

IVGID Board of Trustees member, Beverly Mapps, met with then-chairman of the board, Mr. Bohn, to discuss her serious concerns of governmental misconduct and improper governmental action by IVGID General Manager William Horn.

Soon after that meeting, Ms. Mapps submitted a letter of resignation, charging Mr. Bohn with dereliction of duty and complicity in alleged improper governmental actions by General Manager William Horn. In the resignation letter, Ms. Mapps stated, in part: “. . . it is clear to [her] that [Mr. Bohn] intend[s] to continue to allow Mr. Horn to do business as usual. [They] discussed Bill’s false accusations with regard to a community member and the fact that another community member received an e-mail from Bill containing language which he perceived as threatening.” In her letter, Ms. Mapps also

stated that Mr. Horn needs to be accountable for his actions and perceived threats and innuendos contained in his correspondence.

Mr. Bohn and General Manager Horn did not follow the appropriate process to fill the vacancy created by Ms. Mapps' resignation. When Mr. Kroll informed Mr. Horn that the process was inconsistent with the requirements of Nevada law, Mr. Horn's response to Mr. Kroll was hostile and offensive.

E. SUMMARY OF SUBJECT'S RESPONSE:

A *Waiver of Statutory Time Requirement* was received from Mr. Horn on January 24, 2007. Mr. Horn submitted a response to the complaint by and through IVGID General Counsel, T. Scott Brooke, on March 2, 2007. The following is the substance of his response:

Allegations included within the complaint concerning the open meeting law (NRS 241), the Nevada election law (NRS 293) and other Nevada laws are not addressed in this response since the Commission on Ethics has no jurisdiction as it pertains to those statutes.

The allegations are factually and legally unsupportable. The record clearly reflects that IVGID Board of Trustees Chairman Bohn provided proper notice of the resignation as well as a copy of the resignation letter at the first public meeting following receipt of the letter.

The direction to General Manager Horn to develop a procedure to advise applicants and to bring the matter back at the next board meeting was not only within Chairman Bohn's general power of directing staff, but was also within the inherent responsibilities of the general manager to undertake on his own.

The matter was placed on the agenda as an action item for the general meeting following the meeting at which Trustee Mapps' resignation was announced. There was an additional special meeting to further consider the matter, and then a third meeting in January 2007 at which the final action to fill the vacancy was taken. The record shows a comprehensive analysis and evaluation of the matter occurred in public.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.¹

(b) “Unwarranted” means without justification or adequate reason.

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6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

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NRS 281.554 Public officer or employee prohibited from requesting or otherwise causing governmental entity to incur expense or make expenditure to support or oppose ballot question or candidate in certain circumstances.

1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

(a) A ballot question.

(b) A candidate.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

¹**NRS 281.501(8):** As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

- (1) The government of this State;
- (2) An agency of the government of this State;
- (3) A political subdivision of this State; and
- (4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

- (1) A press release issued to the media by a governmental entity; or
- (2) The official website of a governmental entity.

(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.

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G. RESULTS OF INVESTIGATION:

The allegations against Mr. Horn that are the subject of Ms. Mapps' letter of resignation appear to be personnel matters that do not fall within the purview of the Nevada Ethics in Government Law. Furthermore, the allegations are vague and lack specificity regarding the conduct being alleged.

Ms. Mapps' letter of resignation was directed to Mr. Bohn through the IVGID general counsel (see related RFO #06-82). There is no evidence that Mr. Horn had any knowledge, receipt, or control of the letter.

Mr. Horn followed the direction of the chairman of the board when he was directed to develop a procedure for filling the vacancy created by the resignation of Trustee Mapps. As an employee of the IVGID, the general manager acts under the direction of the chairman and board of trustees.

The entire issue of the handling of Ms. Mapps' resignation and the process of filling the vacancy created by her resignation is more appropriately addressed under RFO 06-82 regarding the requester's complaint against Mr. Bohn.

Mr. Horn's hostile and offensive response to Mr. Kroll's suggestion that the process of filling the vacancy was not consistent with Nevada law also appears to be a personnel matter that does not fall within the purview of the Nevada Ethics in Government Law.

There appears to be an absence of allegations of facts and circumstances of conduct that would indicate a violation of the Ethics in Government Law.

H. CONCLUSION:

Allegations regarding NRS 281.481(2):

The allegations regarding Mr. Horn's conduct lack specificity. There is no evidentiary basis that he used his position to secure unwarranted privileges, preferences, exemptions or advantages for himself or anyone else. His position is subject to the direction of the chairman and board of trustees. Accordingly, he was directed by the chairman to develop a procedure to fill the vacancy created by the resignation, to advise applicants, and to bring the matter back at the next board meeting. There is no credible evidence to support the allegation that Mr. Horn acted in violation of NRS 281.481(2).

Allegations regarding NRS 281.481(6):

Notwithstanding the fact that Mr. Horn's alleged conduct was a subject of Ms. Mapps' letter of resignation, there is no evidence that Mr. Horn had any knowledge, receipt or control of the letter. Therefore, there is no evidence that Mr. Horn participated in any suppression of the letter in order to protect his pecuniary interests. There is no evidentiary basis to support the allegation that Mr. Horn acted in violation of NRS 281.481(6).

Allegations regarding NRS 281.554:

There are no specific allegations made, nor does any credible evidence exist to indicate that Mr. Horn requested or caused the IVGID to incur an expenditure to support or oppose either a ballot question or a candidate. Mr. Horn was directed by the chairman of the board to develop a procedure for filling the vacancy created by the resignation of Trustee Mapps. As an employee of the IVGID, the general manager acts under the direction of the chairman and board of trustees. There is no evidentiary basis to support the allegation that Mr. Horn acted in violation of NRS 281.554.

I. RECOMMENDATIONS:

There is no credible evidence to substantiate a potential violation of NRS 281.481(2), NRS 281.481(6) or NRS 281.554. Accordingly, it is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Horn violated the provisions of NRS 281.481(2), NRS 281.481(6) or NRS 281.554.

Prepared by: Matt C. DiOrio DATED: 7/6/07
MATT C. DI ORIO
SENIOR INVESTIGATOR